

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

FILED

DEC 12 2005

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

THIEN AN VO,

Plaintiff - Appellant,

v.

ANN BARRY,

Defendant - Appellee.

No. 04-17466

D.C. No. CV-04-02699-RMW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Ronald M. Whyte, District Judge, Presiding

Submitted December 5, 2005**

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

Thien An Vo appeals pro se the district court's judgment dismissing for lack of subject matter jurisdiction her action for breach of trust against Ann Barry,

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** The panel unanimously finds this case suitable for decision without oral argument, and Barry's request for oral argument is denied. *See* Fed. R. App. P. 34(a)(2).

the successor trustee of the To Thi Dien trust, of which Vo is a beneficiary. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Luong v. Circuit City Stores, Inc.*, 368 F.3d 1109, 1111 n.2 (9th Cir. 2004), and we affirm.

The district court properly dismissed Vo's action for lack of subject matter jurisdiction because Vo failed to present any evidence that the assets of GGS Publications, or her emotional injury resulting from her dealings with Barry, reached the required \$75,000 in damages. *See* 28 U.S.C. § 1332 (setting a \$75,000 amount in controversy threshold for diversity jurisdiction); *McCauley v. Ford Motor Co.*, 264 F.3d 952, 957 (9th Cir. 2001) (the party asserting diversity jurisdiction bears the burden of establishing by a preponderance of the evidence that the amount in controversy exceeds \$75,000).

Vo's remaining contentions lack merit.

AFFIRMED.